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09/671,571	09/27/2000	Avery Li-Chun Wang	69323/P002US/10511081	4634
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FULBRIGHT & JAWORSKI L.L.P			EXAMINER	
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SUITE 2800				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

mW

<b>Office Action Summary</b>	<b>Application No.</b> 09/671,571	<b>Applicant(s)</b> WANG ET AL.	
	<b>Examiner</b> Azizul Choudhury	<b>Art Unit</b> 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 35-47 and 49-96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 85-96 is/are allowed.
- 6) ☒ Claim(s) 35-47 and 49-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
  - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Detailed Action***

This office action is in response to the correspondence received on August 13, 2007.

***Specification***

The disclosure is objected to because of the following informalities: The claimed, "remote audio capture device," cannot be found within the specifications.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 35-47, 49-84 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed, "remote audio capture device," cannot be found within the specifications, appropriate corrections are required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 35-44, 47, 49-51 and 53-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Kenyon et al (US Patent Number: US007194752B1), hereafter referred to as Kenyon.

1. With regards to claim 35, Kenyon teaches a method for providing a transaction to a user having a remote audio capture device where the user is exposed to a music broadcast, the method comprising the steps of: directly receiving from the remote audio capture device a signal, the signal including a captured sample of the music broadcast (column 5, lines 28-30, Kenyon); determining from the signal a characteristic of the captured sample (column 5, lines 27-43, Kenyon); determining the identity of the music in the captured sample using the signal characteristic (column 5, lines 44-57, Kenyon); and triggering a predetermined transaction with the user involving the music identified in the captured sample (column 1, lines 21-31, Kenyon).

2. With regards to claim 36, Kenyon teaches the method, wherein the predetermined transaction includes sales and purchase of merchandise (column 1, lines 21-31, Kenyon).

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3. With regards to claim 37, Kenyon teaches the method wherein the predetermined transaction includes an offer for sale of merchandise (column 1, lines 21-31, Kenyon).
4. With regards to claim 38, Kenyon teaches the method wherein the offer for sale of merchandise includes an offer to sell recordings of music (column 1, lines 21-31, Kenyon).
5. With regards to claim 39, Kenyon teaches the method wherein the recording is related to a characteristic of the captured sample (column 6, lines 9-24, Kenyon).
6. With regards to claim 40, Kenyon teaches the method wherein the predetermined transaction includes furnishing and receiving information (column 1, lines 21-31, Kenyon).
7. With regards to claim 41, Kenyon teaches the method wherein the predetermined transaction includes delivery of advertising or promotional offers (column 1, lines 21-31, Kenyon).
8. With regards to claim 42, Kenyon teaches the method wherein the promotional offers include free trials (column 1, lines 21-31, Kenyon).

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9. With regards to claim 43, Kenyon teaches the method wherein the promotional offers includes offers to sell merchandise or services at discounted prices (column 1, lines 21-31, Kenyon).

10. With regards to claim 44, Kenyon teaches the method wherein the predetermined transaction includes an exchange of information between a sales source and the user attendant to a sale of merchandise or services to a user (column 1, lines 21-31, Kenyon).

11. With regards to claim 47, Kenyon teaches a method for identifying music to a user, the user having a remote audio capture device, the method comprising: receiving a signal directly from the remote audio capture device, the signal including a captured sample of the music from the user; wherein the music is audible by the user and the captured sample includes a sample of the music (column 9, lines 22-44, Kenyon); determining from the signal a characteristic of the captured sample (column 5, lines 27-43, Kenyon); comparing the characteristic of the captured sample to a characteristic associated with an identity records contained in a database (column 5, lines 44-57, Kenyon); and locating an identity record corresponding to the captured sample according to a result of the comparison (column 5, lines 44-57, Kenyon).

12. With regards to claim 49, Kenyon teaches the method further including returning the identity record to the user (column 16, lines 1-11, Kenyon).

13. With regards to claim 50, Kenyon teaches the method further including offering to sell to the user a recording including at least a song which corresponds to the located identity record (column 1, lines 21-31, Kenyon).

14. With regards to claim 51, Kenyon teaches the method further including offering to provide to the user information relating to the located identity record (column 16, lines 1-11, Kenyon).

15. With regards to claim 53, Kenyon teaches the method further including a step of offering to sell merchandise (column 1, lines 21-31, Kenyon).

16. With regards to claim 54, Kenyon teaches the method wherein the merchandise relates to the located identity record (column 1, lines 21-31, Kenyon).

17. With regards to claim 55, Kenyon teaches the method further including a step of offering sell live performance tickets (column 1, lines 21-31, Kenyon).

18. With regards to claim 56, Kenyon teaches the method wherein the live performance tickets relate to the located identity record (column 1, lines 21-31, Kenyon).

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19. With regards to claim 57, Kenyon teaches the method further including a step of offering sell record albums to be released at a future time (column 1, lines 21-31, Kenyon).

20. With regards to claim 58, Kenyon teaches the method wherein the live performance tickets relate to the located identity record (column 1, lines 21-31, Kenyon).

21. With regards to claim 59, Kenyon teaches the method wherein the information further includes information pertaining to a location of retail music establishments that are in close proximity to the user (column 1, lines 21-31, Kenyon).

22. With regards to claim 60, Kenyon teaches the method further including downloading media to a user device (column 1, lines 21-31, Kenyon).

23. With regards to claim 61, Kenyon teaches the method wherein the downloaded media includes a pre-recorded song corresponding to the located identity record (column 1, lines 21-31, Kenyon).

24. With regards to claim 62, Kenyon teaches the method wherein the user device is selected from the group consisting of PCs, PDAs, internet access devices, wireless internet devices, mobile telephones, wireless information devices and pagers (column 9, lines 39-45, Kenyon).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 45-46, 52 and 63-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon in view of Pocock (US Pat No: US005661787A).

25. With regards to claim 45, Kenyon teaches through Pocock, the method wherein the offer is selected in response to a profile to the user

(Kenyon's design allows for a user to identify music (column 4, lines 55-59, Kenyon). However, no disclosure is made regarding the storage of user profiles.

Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a name and address database based on consumer information (column 3, lines 1-9, Pocock). The content within this database is equivalent to the claimed user profile. Both Kenyon and Pocock teach processing of audible signals. Kenyon's design allows for a user to identify music and to provide commercial services based on the identification of music (column 1, lines 21-31 and column 4, lines 55-59, Kenyon) while Pocock's design allows for phone-based music and music related items purchasing. It would have been obvious to one skilled in the

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art, during the time of the invention, to have combined the teachings of Kenyon with those of Pocock, to provide an automated transaction system to record and track radio audio segments enabling a radio listener to use their telephone to recall and preview, on-demand, music pieces previously broadcast thereby assisting the listener in the purchase of a music product such as a record album, cassette or CD (column 2, lines 34-43, Pocock)).

26. With regards to claim 46, Kenyon teaches through Pocock, the method wherein the offer is selected in response to history of transactions completed with the user (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a name and address database based on consumer information (column 3, lines 1-9, Pocock). The content within this database is equivalent to the claimed user history).

27. With regards to claim 52, Kenyon teaches through Pocock, the method further including a step of playing a recording of a song corresponding to the located identity to the user (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). This includes playback of songs).

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28. With regards to claim 63, Kenyon teaches through Pocock, the method further including receiving commands from the user in response to the returned identity record (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. The user is able to continue to make selections through the keypad of the phone (receiving commands from the user) in response to the service's offers and requests (column 14, lines 8-25, Pollack)).

29. With regards to claim 64, Kenyon teaches through Pocock, the method further including performing an additional predetermined step in response to the command (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. The user is able to continue to make selections through the keypad of the phone (receiving commands from the user) in response to the service's offers and requests. In addition, the service responds to the commands sent by the user (column 14, lines 8-25, Pollack)).

30. With regards to claim 65, Kenyon teaches through Pocock, the method wherein the predetermined step includes delivering a message to a third party (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. When a user selects to make a purchase and enters the credit card information, the service

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communicates with a credit authorization service (equivalent to claimed delivering a message to a third party) (Figure 1, Pocock)).

31. With regards to claim 66, Kenyon teaches through Pocock, the method wherein the message includes a recommendation of music corresponding to the located identity record (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on a song just heard (column 4, line 61 – column 5, line 17, Pocock). Hence means are present by which to search databases (communicate with third parties)).

32. With regards to claim 67, Kenyon teaches through Pocock, the method wherein the predetermined step includes a collection of data indicative of music popularity (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content

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presented for sale can be based on a song just heard, or can be found through browsing (column 4, line 61 – column 5, line 17, Pocock)).

33. With regards to claim 68, Kenyon teaches through Pocock, the method wherein the collected data includes data received from the user (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on a song just heard, or can be found through browsing (column 4, line 61 – column 5, line 17, Pocock)).

34. With regards to claim 69, Kenyon teaches through Pocock, the method wherein the predetermined step includes playing additional songs not associated with the located identity record to the user (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on

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a song just heard, or can be found through browsing (songs not associated with the located identity record) (column 4, line 61 – column 5, line 17, Pocock)).

35. With regards to claim 70, Kenyon teaches through Pocock, the method wherein the predetermined step includes locating one or more music performance artists matching a predetermined criterion (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on a song just heard, or can be found through browsing (column 4, line 61 – column 5, line 17, Pocock)).

36. With regards to claim 71, Kenyon teaches through Pocock, the method wherein the criterion includes similarity of the one or more music performance artists to an artist associated with the located identity record (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on

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a song just heard, or can be found through browsing (column 4, line 61 – column 5, line 17, Pocock)).

37. With regards to claim 72-80 Kenyon teaches through Pocock, the method wherein the predetermined step includes providing a critical review of a music performance artist associated with the located identity record (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). In addition, Pocock's design allows for advertisements (offers) and content other than music (column 5, lines 39-48, Pocock). Plus, the content presented for sale can be based on a song just heard, or can be found through browsing (column 4, line 61 – column 5, line 17, Pocock)).

38. With regards to claim 81, Kenyon teaches through Pocock, the method further including storing the captured sample (column 5, lines 42-43, Kenyon).

39. With regards to claim 82, Kenyon teaches through Pocock, the method wherein the predetermined step includes delivering an excerpt of a recording of a song corresponding to the located identity record (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song

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can also be obtained and returned to the user (column 2, lines 47-67, Pocock). This includes playback of songs).

40. With regards to claim 83, Kenyon teaches through Pocock, the method wherein the excerpt is delivered to the user (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). This includes playback of songs to the user).

41. With regards to claim 84, Kenyon teaches through Pocock, the method wherein the excerpt is delivered to a third party (Pocock teaches a design for a phone based, music and music related items purchasing design. The design allows for a user to search through songs to obtain desired song. Other information regarding the song can also be obtained and returned to the user (column 2, lines 47-67, Pocock). This includes playback of songs. The playback can be sent through a phone hence, a phone user such as the user or a third party is able to receive the playback).

50. The obviousness statement and motivation applied to claim 45 is applicable to claims 45-46, 52 and 63-84.

***Allowable Subject Matter***

Claims 85-96 are allowed. The following is a statement of reasons for the indication of allowable subject matter: No prior art could be found to teach a cell phone that delivers music that was captured to be analyzed.

### ***Response to Remarks***

The amendment received on August 13, 2007 has been carefully examined but is not deemed fully persuasive. The claim amendments to independent claims 35 and 47 are not allowable over the prior art rejection because the new claim limitations are not supported by the specifications. Due to the lack of support, the specification objection and the 112-type rejections have been issued. As per the claim amendments to independent claims 85 and 88, support has been found for such claim limitations and they do overcome the prior art rejections; therefore claims 85 and 88 are deemed allowable along with their dependent claims.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC



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